



Michael F. Easley, Governor

William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Coleen H. Sullins, Director
Division of Water Quality

August 26, 2007

MEMO

TO: 401 Water Quality Certification Mailing List

FROM: John Dorney
Cyndi Karoly

RE: Extension of comments on NC WAM Manual and notice of two public hearings

The purpose of this memo is to inform you of several items in relation to the 401 Water Quality Certification, Isolated Wetland Permit, and Buffer Rules programs. If you have any questions regarding Items I-III, please call John Dorney at 919-733-9646. If you have questions regarding Items IV-X, please contact Cyndi Karoly or Ian McMillan at (919) 733-1786 or by email (Cyndi.Karoly@ncmail.net or Ian.McMillan@ncmail.net).

I. Extension of public comments on NC WAM manual

On May 21, 2007, the Division published a joint Public Notice with the US Army Corps of Engineers, US Environmental Protection Agency and NC Division of Coastal Management to seek comments on the draft NC WAM Users Manual. As described in that notice, NC WAM is a proposed rapid wetland functional evaluation method that was developed by an interagency team over the past several years. The Division has decided to extend the comment period for the NC WAM Users Manual to September 1, 2007 in order to give the public more time to review and comment on this method. This extended time also overlaps with the recently-released, comment period for the US Army Corps of Engineers on this same document. Comments can be sent to the attention of John Dorney, Wetland Program Development Unit, Parkview Building, 2321 Crabtree Blvd., Raleigh, NC 27604 or emailed to John.Dorney@ncmail.net.

II. Public Hearing for proposed Duke Power's application for the Dillsboro dam removal, Jackson County

The Director of the Division of Water Quality has decided to hold a public hearing for the purpose of reviewing public comment and additional information for the proposed Dillsboro dam removal project in Jackson County in accordance with 15A NCAC 2H .0504. The hearing will be held at the Ramsey Center at Western Carolina University in Collowhee, N.C. starting at 6 pm on September 25, 2007. All interested parties are encouraged to comment on the proposed project. The application and supporting information are available in DWQ's Asheville Regional Office at 2090 US Highway 70, Swannanoa, NC 28778 through Kevin Barnett at 828-296-4500. The comment period for the project will remain open for 30 days until October 26, 2007. Written comments may be sent to the attention of John Dorney, Wetland Program Development Unit, Parkview Building, 2321 Crabtree Blvd., Raleigh, NC 27604.

III. Public Hearing for Progress Energy's application of 401 Certification for Tillery and Blewett Falls Reservoirs, Richmond, Stanly, Anson and Montgomery Counties

The Director of the Division of Water Quality has decided to hold a public hearing for the purpose of reviewing public comment and additional information for the proposed Yadkin - Pee Dee River Project (FERC No. 2206-030) for the Tillery and Blewett Falls Reservoirs in Richmond, Stanly, Anson and Montgomery Counties in accordance with 15A NCAC 2H .0504. The public hearing will be held at the Grimsley Building at the Richmond Community College in Hamlet, NC starting at 6 pm on September 18, 2007. All interested parties are encouraged to comment on the proposed project. The application and supporting information are available in DWQ's Fayetteville Regional Office at 225 Green Street, System Building Suite 714, Fayetteville, NC 28301 through Mike Lawyer at 910-433-3300. The comment period for the project will remain open for 30 days until October 19, 2007. Written comments may be sent to the attention of John Dorney, Wetland Program Development Unit, Parkview Building, 2321 Crabtree Blvd., Raleigh, NC 27604.

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IV. **401 Certification/Isolated Wetlands Permits Fee Increase** – The North Carolina General Assembly approved an increase for application fees for all regulatory programs administered by DWQ, effective July 1, 2007. However, please note that this does **not** mean that the increased application fees for the 401 Certification/Isolated Wetlands Permit Programs will be retro-active to July 1, 2007. The Director of DWQ has determined that the fee increase will specifically become effective for the 401 Program on **September 1, 2007**. All applications received by the 401 Unit in Raleigh by close of business on Friday, August 31, 2007, will be accepted under the old fee schedule. All applications received as of September 1, 2007 will be subject to the new fee schedule. If you mail an application near the end of August, be sure to take mailing times into account. If you wish to remain under the old fee schedule, please be sure to use a delivery process that will guarantee receipt in the Central Office by August 31, 2007. As a reminder, the 401 Unit is able to accept mail (including US Mail and private mail carriers) at the physical office location of 2321 Crabtree Blvd., Suite 250, Raleigh, NC, 27604. **Applications received as of September 1, 2007 with insufficient funds to meet the legislation will be returned.** The revised fee schedule is as follows:

Scale of impacts to wetlands*, waters* and streams** (whether intermittent or perennial)	Fee Schedule Effective January 1, 1999 through August 31, 2007	New Fee Schedule Effective September 1, 2007
Greater than or equal to one acre of wetlands/waters AND/OR Greater than or equal to 150 feet of streams (whether intermittent or perennial) (“Major” applications**)	\$475.00	\$570.00
Less than one acre of wetlands/waters AND Less than 150 feet of streams (whether intermittent or perennial) (“Minor” applications**)	\$200.00	\$240.00

* Includes all wetlands and waters identified as Waters of the State, including 404 Wetlands, Isolated Wetlands, and other non-404 Wetlands subject to a permitting program administered by the State of North Carolina.

** Includes all streams claimed by the State of North Carolina. US Army Corps of Engineers stream categories such as important/unimportant, or Relatively Permanent Waters are not relevant to this issue.

***The legislation refers to “major” and “minor” applications. These artificial categories refer to combined impacts, and have no relationship whatsoever to the actual types of 401 Certifications and Isolated Wetlands Permits (Individual and General). Fees are based strictly on the scope of impact, not on the type of authorization requested. If you apply for a 401 Certification and an Isolated Wetlands Permit on a single project, the impacts are added to determine the total application fee.

V. **Bottomless Culverts**

Use of Bottomless Culverts (a.k.a. arch culverts and conspans) on projects that require DWQ 401 Water Quality Certifications, Isolated Wetlands Permits or Buffer Authorizations:

Applicants are advised that bottomless culverts proposed within applications to DWQ and not meeting North Carolina Department of Transportation design standards shall not be approved by this DWQ. Applications for 401 Certifications, Isolated Wetlands Permits and/or Buffer Authorizations that include proposed bottomless culvert(s) must include submittal of a signed and sealed (by a Professional Engineer or Professional Geologist) geotechnical investigation of subsurface soils which directly complies with the ***DIVISION OF HIGHWAYS - GUIDELINES FOR DRAINAGE STUDIES AND HYDRAULIC DESIGN, PREPARED BY A. L. HANKINS, JR., P.E. STATE HYDRAULICS ENGINEER – 1999*** (<http://www.ncdot.org/doh/PRECONSTRUCT/HIGHWAY/hydro/gl0399web/pdf/guidelines.pdf>), which states, “When a shallow (3-5 foot max. depth) non-erosive rock foundation is found throughout the proposed site, the structure can be built on footings without a bottom allowing retention of the natural channel bed.” The non-erosive rock foundation is necessary to minimize stream disturbance during construction, and to prevent scour and differential settlement. The culverts must safely provide conveyance of the design storm event, must be economical to construct and maintain, and should maintain low flow channel and promote retention of bed material. There must be a minimum of 50 feet between borings and 50 blows in less than 6” penetration per ASTM.

VI. General Certification Revision Update

In Public Notices issued March 12, 2007 and May 21, 2007, DWQ requested public review of proposed revisions to the General 401 Water Quality Certifications (GC's). Our goal continues to be to have the final versions of the revised GC's finalized by mid-September 2007, and signed by the Director with an effective date by mid-October 2007. Note that the currently effective GC's will remain in effect until they are "rescinded when deemed appropriate by the Director," so that active GC's will still be available even if this target deadline is not met. The comments were reviewed by staff and a graduate student intern in order to enhance objectivity of the review process. A review summary will be posted on the DWQ website when the final GC's are posted. The final version of the GC's will be public noticed and posted on the website **30 days prior to their effective date** in order to provide time for applicants to modify applications they may be in the process of preparing. Completion of this process is heavily dependent upon staff workload and schedule coordination. In the interest of ensuring a smooth transition during this process, please be advised of the following points:

1. Comments were overwhelmingly in opposition to lowering the written application/notification threshold for particular GC's (such as NW 29 and 39) from 150 feet down to 40 feet. Therefore, the application threshold in such cases will remain at 150 feet as before.
2. The recommendation to lower the stormwater requirement threshold from 30% impervious down to 24% to be more consistent with other state stormwater programs will be upheld as proposed, with the new 24% threshold to be included in the new GC's. However, please see item VIII below, which describes how a large proportion of these plans can be technically reviewed and approved by delegated programs where appropriate in order to meet the stormwater requirement for programs administered by the 401 Oversight and Express Permits Unit. These local programs will need to abide by state thresholds, as described in the memorandum from the Director issued August 8, 2007.
3. Numerous details were commented upon by a large variety of respondents, with the two primary, recurring issues itemized above. The final versions of the GC's will be based upon careful consideration of the comments submitted, along with consultation with the Attorney General's Office and other agencies as appropriate.
4. The GC in effect on the date of issuance will be applied to any and all projects, regardless of the date any particular application was submitted. For example, an application submitted August 30, 2007, and approved October 16, 2007, will have the conditions of the new GC applied (assuming that we are able to meet our target deadlines). In other words, the prior GC's will no longer exist and will be superseded by their replacements, therefore older applications cannot be approved under the predecessor GC's.

VII. DWQ Oversight of Locally Delegated Stormwater Programs

Please see the attached memorandum dated August 20, 2007 from Coleen Sullins, Director of the Division of Water Quality, regarding a policy change in the review and approval process for stormwater management plans associated with applications for programs administered by the 401 Oversight and Express Permits Unit.

VIII. Approval by the Ecosystem Enhancement Program for Buffer Mitigation Prior to Application

In the past, the Ecosystem Enhancement Program (EEP) has accommodated all requests to use the EEP for buffer mitigation via copy of the buffer authorization issued by DWQ. This was allowed without a formal request by the applicant to the EEP prior to submittal of the application to DWQ. The EEP has asked that this policy be revised. We are hereby advising that applicants wishing to use the EEP for buffer mitigation must first consult with the EEP and receive written agreement from the EEP that they will commit to performing the requested buffer mitigation. The written agreement from the EEP must be included with the application for buffer impacts when submitted to the DWQ. This is consistent with the long-standing policy of the EEP as well as DWQ with regards to wetland and stream mitigation.

IX. Format for materials submitted to DWQ

Materials included with applications submitted to DWQ, such as plan drawings, are often provided in a color-coded format. Color-coding is perfectly acceptable and is visually helpful when reviewing plans. Please be sure that those materials can also be interpreted in black-and-white (or grayscale) so that information is not lost in translation during copying or scanning. For example, wetland impact areas could be shaded or crosshatched (with an accompanying legend on the plan) in addition to being colored. Thank you for your assistance in this matter.

X. Application submittal requirements for phased projects and other complex site plans

It has been the longstanding policy of DWQ that if an application for a road crossing of a feature (stream, wetland or buffer) to facilitate development of a property is submitted, then the overall site plan including all wetland, stream and buffer impacts is also required as part of that application. This is done in order to ensure that the road crossing impact is justified (and is not merely for speculative purposes) and to ensure that DWQ can review impact avoidance and minimization measures as required in the Wetlands Rules, Isolated Wetlands Rules and Buffer Rules. All wetland, stream and buffer features must be shown on a site plan such that it can be demonstrated that these features were taken into consideration and avoided to the extent practical during project design. It is also necessary in order to ensure that appropriate, adequately sized stormwater facilities will be incorporated into the development plan. Finally, the Division is also required to consider secondary and cumulative impacts in the review of any application, which involves careful scrutiny of linked phases. This policy is straightforward with respect to properties wherein the overall site plan is known at the time of application, particularly with smaller sites. It becomes less clear with regards to phased development plans such as phased subdivisions or commercial parks. In order to clarify this policy with respect to such complex sites, please note the following policy clarification points, which apply irrespective of the type of authorization sought:

If a phase (i.e. Phase One) of a subdivision can function as an independent, viable project regardless of implementation of future phases, that phase can be treated as a complete project for application purposes, with the following caveats for roads or other infrastructure linked to other phases. If the road network for Phase One will be used to access Phase Two, the applicant is required to demonstrate that the road network within Phase One was designed to ensure that impacts will be avoided and minimized as development proceeds to Phase Two. In other words, if a road stubs out at the border between the two phases, the applicant must be prepared to demonstrate that the road was placed such that it will not set up Phase Two for more impacts than necessary. It is understood that an applicant may not intend to develop (or may not yet have the funding to develop) other phases until future years. Therefore, the applicant may not wish to apply for those impacts until prepared to proceed with construction. However, in most cases, the general intentions for future phases are known. In many such cases, the general development plan for all phases has been submitted to the appropriate local government planning agency, and would serve as a useful attachment for the permit application package. When an application is submitted to DWQ, the applicant should clearly articulate what is known (or unknown) of the schedule for all phases, and be prepared to demonstrate avoidance and minimization of impacts for all phases dependent on the infrastructure of the application at hand. If the applicant does not wish to have the impacts for future phases included within the authorization sought, and instead would prefer to apply for those impacts at a later unspecified date, this should be clearly discussed as well.

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